



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 652 OF 1992

Kantilal Dalichand Bhandari
(Deceased through LRs)

- 1-A Smt. Ichrajbai Kantilal Bhandari
(Deceased)
- 1-B Anilkumar s/o Kantilal Bhandari
age 30 years, occ. Service.
- 1-C Sunilkumamr s/o Kantilal Bhandari
age 28 years, occ. Service.
- 1-D Mrs. Manisha w/o Vijaykumar Mutha
age 25 years, occ. Household
r/o Shrigonda, Dist. Ahmednagar.
- 1-E Dinesh s/o Kanitlal Bhandari
age 24 years, occ. Service.

Petitioner Nos. 1A to 1C, 1E
r/o Behind Rahul Apartment Burudgaon Road
Ahmednagar.

.. Petitioners

VERSUS

- 1. Jasodabai w/o Jagannath Kalantri
age 45 years, occ. Household
r/o Kapad Bazar, Post Tq. Sangamner
Dist. Ahmednagar.
- 2. The Ahmednagar District Urban
Central Co-operative Bank Ltd.,
having its registered office at Ahmednagar
- 3. Bansidhar Motiram Bihani
(Deceased through LRs)

3-A Kansalyabai w/o Bansidhar Bihani
age 60 years, occ. Household
r/o Marwad Galli, Post and Tq. Shevgaon
Dist. Ahmednagar.

3-B Mangal w/o Rameshchandra Bhandari
age 36 years, occ. Household work
r/o Supari Hanuman Chowk
Gulmandi Road, Aurangabad.

4. Gokkuldas Chandanmal Changediya
age 62 years, occ. Trade
r/o Dalmandai, At. Ahmednagar
Dist. Ahmednagar.

.. Respondents

Mr. S. V. Dixit, Advocate for the Petitioner.

Mr. A. H. Kasliwal, Advocate for Respondent No. 1.

Mr. M. A. Jahagirdar, Advocate for Respondent No. 2.

CORAM : R. M. JOSHI, J.

RESERVED ON : 1st AUGUST, 2025.

PRONOUNCED ON : 6th AUGUST, 2025.

JUDGMENT :

1. This Appeal under Section 100 of the Code of Civil Procedure takes exception to the judgment and decree dated 05.05.1984 passed in Regular Civil Suit No. 66/1978, whereby the Plaintiff is declared as owner of the suit house and directed to be put into possession thereof and award dated 24.10.1970 so also sale in favour of Defendant No. 4, is held to be not binding on Plaintiff and the judgment and decree dated 30.09.1992 passed in Regular Civil

Appeal No. 218/1984 confirming the judgment and decree passed by the Trial Court.

2. The parties are referred to as Plaintiff and Defendants for the sake of convenience.

3. Appellant is the original Defendant No. 4, who is auction purchaser of the suit house in the proceedings initiated against Defendant No. 2 for execution of the award passed against him. Plaintiff claims herself to be the grand-daughter of Chunabai Jagannath Bihani. It is claimed that the suit house is purchased in the year 1948 by Chunabai and she carried out construction on the plot in or around 1949. It is further claimed that since then Chunabai was staying in the said house till her death as owner. Defendant No. 2 Banisidhar is nephew of Chunabai. It is the case of the Plaintiff that around the year 1970, Defendant No. 2 by taking undue advantage of ill health of Chunabai had obtained thumb impression of her on blank paper and got his name mutated in the record of Gram Panchayat. It is claimed that the same was done without knowledge of Chunabai. It is claimed that Defendant No. 2

was never owner of the suit house and had no right, title and interest therein.

4. It is further case of the Plaintiff that she was not party to the award or auction sale of suit property by Defendant No. 1/bank against Defendant No. 2 Bansidhar and as such the orders passed therein are not binding on her. Plaintiff claims that Chunabai died on 07.03.1971 and her daughter Ayodhyabai predeceased her in the year 1945. Plaintiff claims herself to be the daughter of Ayodhyabai and in that capacity claims to have inherited the property owned by Chunabai. It is also specifically claimed by Plaintiff that she is the heir of Chuanbai. It is specifically claimed by the Plaintiff that she had no knowledge about the award passed against Defendant No. 2 in the execution proceeding and on 04.04.1078, Defendant No. 2 handed over possession of the suit house to the Plaintiff and since then she is in possession thereof. It is alleged that Defendants were obstructing her possession on the basis of award passed against Defendant No. 2 and hence the suit for perpetual injunction and declaration came to be filed. During pendency of the said suit, Plaintiff claims to have lost possession to Defendant No. 4 on the basis of the auction sale effected in his favour of the concerned

Court. In view of the said development, prayer for possession is also sought by amending the plaint.

5. Defendant No. 1/Bank filed written statement raising objection to the maintainability of the suit for want of notice under Section 164 of the Societies Act, amongst other objections. This Defendant pointed out the background in which the suit property came to be sold in auction for execution of the award passed against Defendant No. 2. It is contended by this Defendant that Defendant No. 2 obtained loan from the bank and since he failed to repay the same, an award came to be passed against him and in execution thereof, the suit property is sold on 05.12.1974. It is contended that the name of Defendant No. 2 is entered in the record of Gram Panchayat and on the basis of same, the proceedings of attachment of sale of the suit house were initiated. It is specifically alleged by this Defendant that the suit is in collusion with Defendant No. 2.

6. Defendant No. 4 filed written statement raising objection with regard to the maintainability of the suit on the ground of limitation. Apart from adopting objections raised by Defendant Nos. 1 to 3, it is contended that the suit house in the name of deceased

Chunabai was a Benami transaction and that Defendant No. 2 was the real owner thereof. It is also claimed by this Defendant that he is the bonafide purchaser of the suit property for value and as such the sale cannot be challenged by Plaintiff.

7. Defendant No. 3 filed written statement denying the contentions of the Plaintiff. This Defendant also claims that Defendant No.2 had purchased the suit properties on 18.01.1949 and 17.02.1954 from his own income but in the name of Chunabai. It is also contended that the suit properties were purchased in the name of Chunabai as the proceedings of recovery of the unpaid loan were pending against Defendant No. 2. It is specifically claimed that Chunabai had no source of income for purchase of suit house or carrying out any construction on the plot.

8. Defendant No. 2 Bansidhar though appeared before the Trial Court but failed to file written statement. He, however, recorded consent for amendment sought by the Plaintiff to the plaint vide Exhibit 61.

9. Trial Court framed issues vide Exhibit 53. Plaintiff did not enter the witness box and examined her cousin Harikishan Maniyar (Exhibit 78), Sk. Chandsaheb (Exhibit 93) and Kishanlal Purohit (Exhibit 102). On behalf of Defendant No. 1/Bank, Chandrashekhar Kher (Exhibit 113) was examined. Defendant No. 3 examined himself at Exhibit 117 and Defendant No. 4 led his own evidence at Exhibit 119. The learned Trial Court by the impugned judgment and award dated 05.05.1984 decreed the suit. Amongst other reliefs, it is held that the Plaintiff is the owner of the suit house and Defendant No. 4 is directed to handover possession thereof to Plaintiff. This judgment was taken exception in Regular Civil Appeal no. 218/1984 unsuccessfully. Hence, this Second Appeal.

10. This Appeal came to be admitted on 03.02.1993 on Ground Nos. 23, 27, 28, 29 and 31 of the Memo of Appeal. This Court, by order dated 30.05.2025, framed additional substantial questions of law which read thus :-

- (I) Was not the suit liable to be dismissed by drawing adverse inference against the plaintiff for not entering the witness box ?

(II) Can PW 1- Harikisan Gangabhishan Maniyar be considered to be a competent witness for the plaintiff since his deposition does not appear to be on the basis of his personal knowledge ?

(III) Has not the plaintiff failed to prove her relationship with deceased Chunabai ?

(IV) In view of Section 15 of the Hindu Succession Act, 1956, will the property owned by Chunabai be inherited by defendant no. 2, who is her nephew (son of husband's brother) or by the plaintiff, who appears to be step-daughter of Ayodhyabai, predeceased daughter of Chunabai ?

(V) Have not the learned Courts erred in law in not dismissing the suit by holding that it was filed by the plaintiff as imposter for defendant no. 2 in the light of material on record, particularly conduct of defendant no. 2 in not contesting the suit but appearing in the matter in order to grant no objection for application for amendment of plaint whereby prayer for possession was sought to be incorporated in the plaint ?

(VI) Was the suit liable to be dismissed for want of statutory notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960 ?

11. Learned counsel for Appellant/Defendant No. 4 submits that the Trial Court as well as the Appellate Court have failed to take into consideration the facts and circumstances of the case and the material evidence on record. It is his submission that the suit was liable to be dismissed for the reason that Plaintiff did not enter the witness box and has not proved her case. It is submitted that the issues before the Trial court were as regards to the relationship of Plaintiff as grand-daughter of Chunabai, and as per the provisions of Section 50 of the Evidence act, for the purpose of proving relationship, the Plaintiff ought to have examined the witness who had knowledge with regard to the factum of Ayodhyabai being daughter of Chuanbai and Plaintiff being daughter of Ayodhyabai. It is his submission that the Plaintiff has examined Harikishan Maniyar who was aged 32 years at the time of his deposition, and in view of the fact that Ayodhyabai died in the year 1945 itself, this witness was incompetent to depose in respect of the relationship of Plaintiff to be daughter of Ayodhyabai. It is his further submission that there is clear cut admission given by this witness regarding two step sons of Ayodhyabai and hence Plaintiff cannot be the sole heir of Ayodhyabai and her such claim ought not to have been accepted by the Trial Court. To support this submission, he has placed reliance on

judgment of Supreme Court in case of Dolgobinda Paricha vs. Nimai Charan Mishra and others, **AIR 1959 SC 914**.

12. It is his further submission that in any case examination of Harikishan Maniyar as a constituted attorney would not be sufficient to prove the case of Plaintiff. It is his submission that as per the law settled by the Supreme Court in case of Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd. And others, **(2005) 2 Supreme Court Cases 217**, the Constituted Attorney can depose in respect of the acts which he has done in pursuant to the power given to him by the Principal. It is his submission that from the evidence of this witness, it cannot be said that he has deposed anything in respect of any personal knowledge or act done by him under the authority of Plaintiff. Thus, it is his submission that there is no evidence led by the Plaintiff to substantiate her case and as a result of which the suit must be dismissed.

13. He further argued that the contesting Defendants have specifically raised the issue with regard to suit house being Benami property standing in the name of Chunabai but infact purchased by Defendant No. 2 Bansidhar. In this regard, he drew attention of the

Court to the fact that at the time of purchase of the suit house, there were proceedings against Defendant No. 2 for recovery of unpaid loan. It is his submission that in the backdrop of this fact, when there is specific averment made in the written statement that the suit house is a Benami property, the burden would be on the Plaintiff to substantiate that Chunabai purchased the suit house from her own income. He drew attention to the Court to the evidence of Harikishan Maniyar to indicate that Chunabai had no independent source of income and in absence thereof, there was absolutely no material to hold that Chunabai could have purchased the suit house. On the other hand, according to him, the circumstances clearly indicate that the property was purchased by Defendant No. 2 as Defendant No. 2 never claimed during the entire proceedings of execution and sale of the suit house that the property does not belong to him. It is contended that the record further indicates that the suit house was mutated in the name of Defendant No. 2 and from the oral evidence of the witnesses and admission given by them, it is crystal clear that Defendant No. 2 was in possession of the suit house and that he was conducting the business of fair price shop therein. It is further argued that there is reason to believe that the suit is collusive in nature for the reason that the suit came to be filed only after

Defendant No. 2 Bansidhar failed in the challenge to the proceeding to attachment and sale of the suit house in the High Court. It is submitted that there is evidence on record to indicate that the Plaintiff had knowledge in respect of the said attachment and execution proceeding in the year 1971 itself and inspite of the same since the suit is not filed within limitation as contemplated by Article 54 of the Limitation Act, the Trial Court ought to have held that the suit is barred by limitation. On the point of Benami transaction, he drew attention of the Court to the findings recorded by the Appellate Court which, according to him, indicate that in view of the provisions of Prohibition of Benami Transaction Act, 1988, it was not open for the Defendant to take the said plea. Thus, according to him, is not the correct position of law in view of judgment of the Supreme Court in case of R. Rajgopal Reddy and others vs. Padmini Chandrasekharan, **(1995) 2 Supreme Court Cases 630**. He also drew attention of the Court to the judgment of the Supreme Court in case of Jayadayal Poddar and another vs. MST Bibi Hazra and others, **(1974) 1 Supreme Court Cases 3** (Paragraph No. 6) to support his contention about Benami transaction.

14. Learned counsel for Appellant/Defendant No. 4 as well as learned counsel for Bank submitted that the suit filed by the Plaintiff against the co-operative society itself was not maintainable for want of notice under Section 164 of the Societies Act. It is their contention that since there was a challenge to the award passed in favour of the co-operative society under the Societies Act, it was mandatory for the Plaintiff to issue notice under Section 164 of the Act. It is also contended that the suit is not tenable in view of provisions of Section 163. To support this submission, they placed reliance on judgment of Division Bench in the case of C. F. Marconi vs. Madhav Co-operative Housing Society Ltd., **1985 SCC OnLine Bom 56**. He further placed reliance on following judgments :-

- i) Mohinder Kaur vs. Sant Paul Singh
(2019) 9 Supreme Court Cases 358
- ii) Devgonda Raygonda Patil vs. Hirabai Devgonda Patil
1991 Mh.L.J. 1470
- iii) Rajpal Singh vs. Saroj & another
(2022) 15 Supreme Court Cases 260
- iv) Padhiyar Prahladi Chenaji vs. Maniben Jagmalbhai & others
(2022) 12 Supreme Court Cases 128

15. On these amongst other grounds, answers to the substantial questions of law are sought in favour of the Appellant/Defendant No. 4 and dismissal of the suit is asked.

16. Learned counsel for Respondent No. 1 resisted the said contention by placing reliance on the observations made by the Trial Court as well as the Appellate Court. At the outset, it is his submission that this Court, while exercising powers under Section 100 of the Code of Civil Procedure, cannot cause interference in the findings of fact even if they are wrong as that by itself will not constitute the question of law. He further argued that different reading of evidence is not perversity and as such concurrent findings of fact recorded by the Courts below need no interference. To support his submission, he placed reliance on the judgment of the Supreme Court in case of Damodar Lal vs. Sohan Devi and others, **2016 ALL SCR 379** and Mithilesh Kumari and another vs. Prem Behari Khare, **AIR 1989 Supreme Court 1247**. He argued that the Plaintiff has proved before the Trial Court that Chunabai was owner of the suit property on the basis of the registered sale-deed. It is his submission that since once the title of Chunabai is proved and is rightly accepted by the Courts below, there is no justification to cause interference in the impugned judgment. He further canvassed that even if it is accepted that the name of Defendant No. 2 came to be mutated in the record of Gram Panchayat, he would not become the owner of the suit property. To buttress the said submission, he placed reliance on the

judgment of the Supreme Court in case of Bhimabai Mahadeo Kambekar vs. Arthur Import And Export Company and others, (2019) 3 Supreme Court Cases 191 to argue that the mutation entry either create nor extinguish possession over property. On the point of limitation, it is argued that the Plaintiff has specifically pleaded about the Plaintiff having no knowledge of the award as well as execution proceedings and orders passed therein and as such after receipt of such knowledge the suit is filed and hence it cannot be said to be filed beyond the period of limitation. It is further submission on the objection with regard the maintainability of the suit for want of notice under Section 164 of the Societies Act that unless the subject matter of the suit touches to the business of the society, no such notice becomes mandatory. According to him, subject matter of the present suit does not touch to the business of the society and as such notice under Section 164 was not necessary and objection to that effect has been rightly rejected by the Trial Court. Thus, it is his submission that overall evidence led before the Trial Court was duly and rightly taken into consideration by both the Courts and no interference is required therein for want of perversity.

17. In order to appreciate the above submissions, it is necessary to take note of certain facts even at the cost of repetition. Plaintiff claims herself to be the grand-daughter of Chunabai and daughter of Ayodhyabai. This contention of Plaintiff has been specifically denied by the contesting Defendants by filing written statement. Defendant No. 2 has not filed written statement accepting the said fact to be true. Thus, the initial burden would be on the Plaintiff to prove that she is the daughter of Ayodhyabai and grand-daughter of Chunabai. She is further required to prove that she is the sole heir of Chunabai. The evidence is led by both sides before Trial Court. The said evidence is analysed in the light of pleadings of parties herein after.

LOCUS STANDI OF THE CONSTITUTED ATTORNEY OF THE PLAINTIFF TO DEPOSE ON HER BEHALF :

18. Plaintiff herself did not enter the witness box. It is sought to be argued on behalf of the Appellant/Defendant that on this count alone, the suit must be dismissed. A reference is made to the judgment of the Supreme Court in case of Janki Vasudeo Bhojwani (supra) in order to argue that the constituted attorney can depose only in respect of the acts which are performed by him

pursuant to the powers given by the Principal. It is relevant note that here in this case, the witness is not third party but is the cousin and a member of family of Plaintiff. This fact is not in dispute. He has candidly deposed about the relationship between the parties and being the family member it cannot be said that the said facts were not within his knowledge. Moreover, the cross-examination conducted by the Defendant indicates that there was no challenge made with regard to the personal knowledge of this witness or in respect of the facts deposed by him. Pertinently, when the witness has categorically stated about the relationship between Chunabai, Ayodhyabai and Plaintiff Jasodabai, there is not even suggestion in the cross-examination that his statement is untrue. Apart from this, from cross-examination of this witness, it is the Defendant who has brought on record certain facts which clearly show that the witness has deposed on the basis of his personal information. Thus, it cannot be said that the witness had no knowledge of the facts to depose the facts as stated by him on oath before the Trial Court. The evidence of this witness, therefore, cannot be discarded as sought by the Appellant. Consequently, it cannot be said that suit deserves to be dismissed for non-examination of Plaintiff.

PROOF OF RELATIONSHIP AND SECTION 50 OF EVIDENCE

ACT :

19. As recorded above, it is the case of the Plaintiff that she is the daughter of Ayodhyabai and grand-daughter of Chuanbai. Though it is a matter of fact that Ayodhyabai predeceased Chunabai, the relationship is sought to be proved through PW 1 Harikishan Maniyar, who is the cousin brother of Plaintiff Jasodabai. Being member of family, he has deposed about Plaintiff being daughter of Ayodhyabai. Here it is necessary to mention that no dispute has been made by the Defendants with regard to the fact that Ayodhyabai is daughter of Chunabai. In this backdrop, when this witness has stated about Plaintiff being daughter of Ayodhyabai, there is no cross-examination of this witness by Defendants denying the said fact. Moreover, the said fact is also supported by evidence of PW 2 Sk. Chandsaheb (Exhibit 93). He was aged about 75 years at the time of his deposition. He claims to have known about fact that Plaintiff is the daughter of Ayodhyabai and grand-daughter of Chunabai. There is also no cross examination of this witness on this fact and not even denial is sought of the said fact deposed. It is argued that the witness is not able to state the surname of Chunabai or name of her husband. Once there is no dispute made about statement with

regard to the relationship of the parties, non disclosure of surname or name of husband may not become fatal to his testimony. The place where the suit property is situated is in mofussil area and in the decade of 70s or prior thereto, if a person does not know the details of a woman, it is fairly justified. More particularly when there is no dispute made with regard to the relationship deposed by this witness, there is no reason to discard his testimony.

20. Section 50 of the Evidence Act permits the Court to draw inference with regard to the relationship in case of evidence brought on record on the basis of personal knowledge of any person. Here in this case, for want of any dispute being made with regard to the oral evidence led by the Plaintiff, there is no reason to cause interference in the said evidence recorded by the Trial Court holding that Plaintiff is the daughter of Ayodhyabai and grand-daughter of Chunabai.

21. Next question which was sought to be argued in connection with the relationship is that during the cross-examination it has come on record that Plaintiff has two step brothers. Thus, it is contended on behalf of the Appellant that the suit itself is not tenable. The issue involved in this suit is not in respect of shares of

Plaintiff and her brothers in the suit house. The declaration is sought that the Plaintiff is the owner of the suit property and that auction sale pursuant to the award is not binding. It would not be open for any one else including the Defendants to raise objection to the tenability of suit on this ground. What is material is that the Plaintiff represented the estate of deceased in this proceeding. Since this case is not for partition and determination of shares interse between Plaintiff and her brothers and since the assets of the deceased is represented in this suit by the Plaintiff, there was no impediment in entertaining the suit even if it is accepted that Plaintiff has two brothers, it does not become a substantial question of law. In any case, the same is inconsequential for decision of the suit. Though substantial question of law has been framed with regard to the inheritance of property of Chunabai by Defendant No. 2 under Section 15 of Hindu Succession Act, no specific plea has been raised by the Defendants in the written statement. Hence, without raising such plea and this being not pure question of law, cannot be agitated in this appeal. In fact, it was case of Defendants that Defendant No. 2 is owner of suit house and it was benami purchase in the name of Chunabai.

**TITLE AND POSSESSION OF PLAINTIFF/PREDECESSOR OVER
SUIT PROPERTY :-**

22. There is no dispute about the fact that the suit property was purchased long back in the name of Chunabai. As held above, she had source of income to purchase the same. Moreover, evidence on record further indicates that after purchase of land, construction of house is done by her. Thus, no dispute could be made by Defendants about she having title and ownership in respect of the suit property. The contention of contesting Defendants of Defendant No. 2 being owner thereof rests upon benami transaction and letter given by Chunabai to Gram Panchayat for recording name of Defendant No. 2 in the record. Even if this is accepted to have happened for sake of argument, still the title of property cannot be transferred in his name. It is also sought to be contended by Defendants that Defendant No. 2 in possession of suit house and was running a fair price shop therein. The evidence in this regard however, indicates that the suit house was used for residential purpose. The cross-examination of Plaintiff's witness indicates so. It has come in his cross-examination that after death of Chunabai, Plaintiff used to look after the house. There is suggestion to this witness that Defendant No. 2 was permitted to reside therein. This

indicates that possession, if any, of Defendant No. 2 was permissible in nature and not as owner of suit house. Similarly, evidence of Shaikh Chandsaheb also corroborates the said evidence. Moreover, when the suit house was taken in possession by Defendant No. 4, the same was in possession of Plaintiff. All these facts evident from record indicate that the findings recorded by both Courts are on due consideration of material evidence on record.

BENAMI TRANSACTION :

23. Defendant No. 4 has claimed in the written statement that Defendant No. 2 has purchased the suit property in the name of Chunabai in order to avoid payment to the creditors. In case of Jayadayal Poddar (supra) the Supreme Court has held that the burden to prove the sale as Benami and the apparent purchaser is not the real owner always rests on the person asserting it to be so. It is also held therein that there cannot be any absolute formula or acid test which can be uniformly made applicable in all situations. The Supreme Court has held therein that the Courts usually are guided by the circumstances such as source from which the purchase money came, nature of possession of the property after purchase,

motive, if any for giving transaction a Benami colour, relationship of the parties and custody of title deeds and conduct of the parties.

24. Thus, initial burden would be on the Defendants to prove that the transaction of sale in respect of the suit house is Benami. Perusal of evidence of the Defendants does not indicate even a single statement being made in this behalf by the Defendants or their witness. Thus, it cannot be said that initial burden has been discharged by Defendants to hold that the suit house is Benami property of Defendant No. 2 held in the name of Chunabai.

25. As against this, the cross-examination of Plaintiff's witness clearly indicates that the suit house was not the only property held by Chunabai. She had other properties. There is further cross-examination which indicates that Chunabai had two agricultural lands too. Thus, it cannot be said that Chunabai had no source of income or properties to purchase the suit house. Thus, for want of any evidence, the contention of Defendants that suit house is Benami property and that Defendant No. 2 was ostensible owner thereof, cannot be accepted.

26. Section 41 of the Evidence Act deals with the said issue. It is sought to be contended on behalf of the Defendants that the suit property was transferred by Chunabai in favour of Defendant No. 2 and his name came to be recorded in the record of the Gram Panchayat. It is also contended that the suit property was in possession of Defendant No. 2 and all these facts indicate that he was the real owner of the suit house. Since Defendant No. 2 had contested the award and execution of the same till Supreme Court, it is sought to be canvased that unless he was the owner, he would not have contested the said claim. Holding so on the basis of such submissions would be mere assumption. It is to be established by leading evidence that Defendant No. 2 was ostensible owner of the suit house and in absence thereof it cannot be said so.

LIMITATION :

27. Plaintiff has filed the suit for declaration that the award passed in favour of Defendant No. 4 and execution of the said award by auction sale of the suit property is not binding on the Plaintiff. The said declaration is sought on the ground that the predecessor of the Plaintiff was owner of the suit property and that Defendant No. 2

had no right, title and interest therein. It is also suggested in the cross-examination of Plaintiff's witness that the construction of house after purchase of the land was done by Chunbai in presence of her son-in-law. This plea is supported by further averment that there was no notice to the Plaintiff in respect of the said proceeding of award and auction sale. It is also claimed on behalf of the Plaintiff that the suit property was not mortgaged or tendered by way of security against the loan obtained by Defendant No. 2. In this backdrop, a specific plea has been raised that the Plaintiff came to know about the auction sale in March 1978. The Plaintiff has also sought recovery of possession of the suit property which was lost to Defendant No. 4 in the year 1982.

28. Plaintiff examined her constituted attorney and also led evidence of two witnesses. Suffice it to say that Plaintiff led evidence in order to support her submission with regard to there being no knowledge of the Plaintiff in respect of the said proceedings. At this stage, it would be relevant to take note of the evidence led by Defendant No. 1/Bank. The witness of the Bank Chandrashekar (Exhibit 113) has clearly admitted that no notice was issued before attachment of the suit house in newspaper nor by beating of drums.

There was nothing on record brought by the Defendant in order to indicate that the Plaintiff had knowledge of the said proceeding and hence the suit could be held beyond limitation. The suit is for declaration that the award and the auction sale is not binding upon the Plaintiff so also for possession of the suit house and having regard to the facts of the case, it cannot be said that the suit is barred by limitation and the findings recorded by the Courts below deserve no interference for want of perversity therein.

SECTIONS 163 AND 164 OF THE SOCIETIES ACT :-

29. Defendant No. 4 has raised objection with regard to the maintainability of the suit on the ground that notice contemplated by Section 16 of the Societies Act has not been issued prior to the institution of the suit. Such defence by itself indicates that Defendant No. 1 does not challenge the jurisdiction of the Civil Court. There is no specific challenge raised with regard to the jurisdiction of the Civil Court to entertain the suit. Thus, though sought to be argued, there is no substance in the contention of the Defendants

that the suit is barred by jurisdiction under Section 163 of the Societies Act.

30. Insofar as notice to the bank is concerned, perusal of provisions of the Act clearly indicates that the notice would be contemplated only in cases the subject matter of the suit touches the business of the co-operative society. In this regard, the Courts below have clearly held that the subject matter of the suit does not touch the business of the society and as such notice under Section 164 of the Societies Act was not required. In the facts of the case, the said finding is correct.

31. Though the arguments advanced by learned counsel for Appellant/Defendant No. 4 are attractive and in accordance with the law, but same are not supported by the material on record and hence deserve no acceptance. As discussed above, the concurrent findings of facts recorded by the Courts below are in consonance with material on record so also law on this subject and therefore no perversity could be found therein. The substantial questions of law framed therefore deserve to be answered in favour of original Plaintiff.

32. In view of above discussion, Appeal stands dismissed.
Pending Application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb

LATER ON :

1. Learned counsel for Appellants seeks continuation of interim relief for a period of six weeks.
2. Learned counsel for contesting Respondents opposes the said request.
3. Since the interim relief is in force since 1992, the same is extended for a period of six weeks.

(R. M. JOSHI)
Judge

dyb